

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

HANSON AGGREGATES BMC, INC.

and

INTERNATIONAL UNION OF
OPERATING ENGINEERS,
LOCAL 542, AFL-CIO

Cases **04-CA-033330**
04-CA-033508
04-CA-033547
04-CA-034290
04-CA-034362
04-CA-034363
04-CA-034378

HANSON AGGREGATES BMC, INC.

and

INTERNATIONAL UNION OF
OPERATING ENGINEERS,
LOCAL 542, AFL-CIO

Cases **04-CA-037998**
04-CA-069822

ORDER GRANTING MOTION FOR RECONSIDERATION¹

On July 2, 2014, International Union of Operating Engineers, Local 542, AFL-CIO, filed an “Appeal of Close of Compliance” in the above-referenced cases in light of *Noel Canning v NLRB*, 134 S. Ct. 2550 (2014), where the Supreme Court held that the Board lacked a proper quorum at the time these cases were decided. By letter dated August 11, 2014, the Union was informed that its submission would be treated as a motion for reconsideration in the above-captioned cases.²

The Union’s motion for reconsideration is granted, and the Board has considered the above matters de novo. The Board orders as follows:

Cases 04-CA-033330; 04-CA-033508; 04-CA-033547; 04-CA-034290;
04-CA-034362; 04-CA-034363; and 04-CA-034378

¹ The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

² The Union was also informed in the August 11, 2014 letter that the Decision and Order issued on July 18, 2011, in which a valid quorum of Board members approved a formal settlement stipulation in Cases 04-CA-034678, 04-CA-035134, 04-CA-035140, 04-CA-305189, 04-CA-035487, 04-CA-035553, 04-CA-036099, 04-CA-036256, 04-CA-036468, 04-CA-036530, 04-CA-037161, 04-CA-037348, was not reviewable at this time.

In this proceeding, the Board issued a Decision and Order finding, inter alia, that the Respondent violated Section 8(a)(5) and (1) by making unilateral changes in terms and conditions of employment without the Union's consent. See 353 NLRB 287 (2008), *enfd. by consent order, NLRB v. Hanson Aggregates BMC*, No 09-2817 (3d Cir. 2009). Thereafter, the Regional Director for Region 4 issued a compliance determination letter. The Union filed an appeal of this compliance determination with the General Counsel, which was denied. On March 19, 2013, the Board granted the Union's request for review of the General Counsel's denial, and remanded the matter to the Regional Director for Region 4 for further consideration. On February 12, 2014, the Regional Director for Region 4 issued an amended compliance determination in this matter, and on June 24, 2014, the General Counsel denied the Union's appeal of that determination. At issue in the Union's motion for reconsideration is the Board's March 19, 2013 remand of the compliance matter to the Regional Director, and the subsequent events resulting from the remand.

The Board has reviewed the record in light of the positions of the parties, and finds that a remand to the Regional Director concerning his compliance determination was appropriate, for the reasons set forth in the March 19, 2013 Order.³ As the Regional Director has already reviewed the compliance determination and issued a revised determination on February 12, 2014, nothing would be gained by ordering the Regional Director to take those steps again, and we shall not require it. Further, we shall not require the Union to again file an appeal with the General Counsel regarding the revised compliance determination.

Cases 04-CA-037998 and 04-CA-069822

On June 3, 2013, the Board issued a Decision and Order approving a Formal Settlement Stipulation entered into by the Respondent and the Board's then-Acting General Counsel, over the Union's objections. On June 28, 2013, the Board denied the Union's motion for reconsideration of the Board's Order. On February 12, 2014, the Regional Director for Region 4 issued compliance determination in the referenced matters, finding that the Respondent had fully complied with the Board's Decision and Order. On June 24, 2014, the General Counsel denied the Union's appeal of that compliance determination.

The Board has reviewed the Formal Settlement Stipulation in light of the Union's objections and finds that the Formal Settlement Stipulation was properly approved and

³ Member Miscimarra agrees that a remand to the Regional Director concerning the compliance determination was appropriate. Although the Union's requests to the Respondent for rescission of the unlawfully implemented compensation structure were not a model of clarity, the requests were clear enough to constitute a "request" for purposes of the Board's 2008 Decision and Order. Consequently, a remand to the Regional Director for further consideration of the Respondent's compliance with these requests was appropriate.

the motion for reconsideration was properly denied. The Board has issued a separate Decision and Order approving the parties' Stipulation on this date.

Leave to file request for review

Because this order now confirms our prior rulings on which the General Counsel's June 24, 2014 compliance decisions in these proceedings are predicated, any previous deadline for appeal of the June 24 decision to the Board is tolled until the date of this Order. Therefore the Union may file a request for review with the Board in each of these proceedings regarding the General Counsel's June 24, 2014 decisions to deny its appeals of the compliance determinations in the above-captioned cases. The requests for review should clearly identify the facts and reasons that form the basis of the objections. The requests must be received by the Board no later than the close of business 14 days after the date of this Order, **September 11, 2015**, and must be served on the General Counsel and on the Regional Director. The requests for review should be addressed to:

Executive Secretary
National Labor Relations Board
1015 Half Street S.E.
Washington, DC 20570

If the requests for review are filed electronically, they will be considered timely filed if the requests, together with any other documents to be considered, are sent through the Agency's website so that the transmission is completed by no later than 11:59 p.m. Eastern Time on the due date. If the requests for review are mailed or sent by a delivery service, the Executive Secretary must receive them in Washington, D.C. by the close of business at 5:00 p.m. Eastern Time or be postmarked or given to the delivery service at least one day prior to the due date. The General Counsel may file a response within 14 days after the filing of any request of review.

Dated, Washington, D.C., August 28, 2015.

MARK GASTON PEARCE,	CHAIRMAN
PHILIP A. MISCIMARRA,	MEMBER
LAUREN McFERRAN,	MEMBER